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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 26th April 2013

No. 4025—IR-(ID)-99/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th March 2013 in I. D. Case No. 10 of 2012 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Jain Steel & Power Ltd., Jharsuguda and their workman Shri Malaya Kumar Giri was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR
INDUSTRIAL DISPUTE CASE NO. 10 OF 2012

Dated the 14th March 2013

Present :

Shri Srikanta Mishra, LL.M.,
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of the .. First Party—Management
Jain Steel & Power Ltd.,
through the Managing Director/Director,
M/s Jain Steel & Power Ltd.,
At/P.O. Durlaga, Dist. Jharsuguda.

And

Their Workman, .. Second Party—Workman
Shri Malaya Kumar Giri,
At Gomadera,
P.O./P.-S. Belpahar, Dist. Jharsuguda.

Appearances :

None	.. For the First Party—Management
Shri R. N. Debta, Advocate	.. For the Second Party—Workman

AWARD

This Award arises out of a reference made by the Government of Odisha, Labour & E.S.I. Department under the powers conferred by sub-section (5) of Section 12, read with Clause (C) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short “the Act”) vide order under Memo. No. 7724 (6), dated the 31st August 2012. The dispute involved under the schedule of reference is as follows :—

“Whether the termination of employment of Shri Malaya Kumar Giri with effect from the 6th August 2010 by way of refusal of employment by the Management of M/s Jain Steel & Power Ltd., At/P.O. Durlaga, Dist. Jharsuguda is legal and/or justified ? If not, what relief Shri Giri is entitled to ?”

2. The case of the second party workman as per his statement of claim is that he, in response to an advertisement published by the Management applied for the post of Data Entry Operator-cum-Junior Accountant and after an interview he was asked to join in duty on 16-3-2009 with monthly salary of Rs. 7,000. He joined in service on the said date and though no appointment order was issued he was assigned with Employee No. JSP 1131. The workman alleges that though he was recruited for the post of Junior Accountant, he was entrusted with Supervisory work of hazardous nature without providing safety equipments and besides that he was being paid Rs. 4,000 per month instead of Rs. 7,000. During the month of April, 2009 his mother became seriously ill and for her treatment at Vellore he submitted leave application on Dt. 25-4-2009 which was orally allowed by the HOD Personnel of the Management. He resumed his duty on 5-6-2009. Due to his self sickness and medical treatment he remained on leave from 8-12-2009 to 5-8-2010. On 6-8-2010 when he requested the Management to allow him to perform his duties, he was refused employment. On 11-8-2010 he submitted a written representation by Regd. Post to the management but they remained silent. The workman prays for reinstatement in service with full back wages and all other benefits along with cost of the litigation.

3. The workman lodged a complaint before the District Labour Officer, Jharsuguda and finding that there was an Industrial Dispute, his complaint was admitted into conciliation vide Memo. No. 1363 (2), Dt. 15-4-2011. The D.L.O.-cum-Conciliation Officer could not resolve the dispute as there was no settlement between the parties and therefore, he submitted a failure report. On the basis of the said report, the Government has referred the dispute for adjudication.

4. The management despite service of Regd. Notice from this Court remained absent, and did not file any written statement. Therefore, the management is set *ex parte* vide Order, Dt. 15-11-2012.

5. The workman examined himself as sole witness and proved several documents which were marked Ext. 1 to Ext. 14.

6. During course of evidence, the workman deposed about the entire facts as narrated in the statement of claim. It is well proved from the oral and documentary evidence on record that the second party Shri Malaya Kumar Giri was recruited as a workman by the management in the year 2009 but no appointment letter was issued in his favour. The workman claims that he was recruited to work as Data Entry Operator-cum-Junior Accountant but he was assigned with Supervising work in a hazardous nature. He admits that he performed the said job as he was in dire need of employment and had no way out. During course of his evidence, the workman deposed that the management assigned Employee Number to him, i.e., JSP 1131. Such fact is supported from one salary statement for the month of August, 2009 marked as Ext. 14. Therefore, I have no hesitation to hold that the second party continued to work under the first party as a workman from the year 2009.

7. The second party alleges that from 8-12-2009 to 5-8-2010 he was seriously ill and was under medical treatment. He further, claims that on 8-12-2009 he prayed for leave which was allowed by one Shri S. K. Chand, HOD, Personnel of the management. He alleges that on 6-8-2010 when he wanted to resume his duty, the management refused employment to him. During course of hearing the workman has filed a copy of Medical Certificate issued by Dr. Latika Patel, Medical Officer-in-Charge, Lakhapur CHC, Dist. Jharsuguda (Marked Ext. 5) which reveals that the second party was suffering from Hepatitis and from that date he was unfit to perform his duties. It reveals from Ext. 7, a copy of registered letter sent by the workman to the Personnel Manager of the first party that the workman intimated the management that due to illness he could not resume his duty. The workman further relies upon another Medical Certificate (Ext. 7/b) issued by the above Medical Officer to the effect that he was actually under his treatment from 8-12-2009 to 5-8-2010. In absence of any counter evidence I am constrained to hold that the workman was unable to perform his duties under the management from 8-12-2009 to 5-8-2010 and his request to resume duties on 6-8-2010 was turned down without any sufficient cause. Admittedly, no disciplinary proceeding was conducted and no notice was given to the workman regarding termination of his service. In such view of the matter, the termination of employment of the second party by the management with effect from the 6th August 2010 is held to be illegal and unjustified.

8. Since it has already been held that the termination of service of the second party by the first party is illegal and he continuously served under the management, he is entitled to reinstatement in service.

9. As regards the claim of the second party regarding back wages I find he joined in the service on 16-3-2009. He was absent from duty for the period from 25-4-2009 to 4-6-2009 to attend the treatment of his ailing mother. Besides, he further remained absent from duty with effect from the

8th December 2009 for his self sickness and after recovery when he proceeded to resume his duties on 6-8-2010, he was refused employment. It reveals from the salary statement filed by the workman marked Ext. 9 that he was paid his wage and other allowance for the period from March, 2009 to December, 2009 on the basis of his actual days of duty. It is clear from the Ext. 9 that the second party was being paid his wages/salary on the days of his actual work and his salary was not fixed in each month. It is only in the month of July, 2009 he was paid for 31 days of the month. In that month, his total salary (including all allowances) was Rs. 4,192. The workman does not appear to have made any demand before the management regarding enhancement of his salary and therefore, his claim that he was appointed with a salary of Rs. 7,000 per month is not acceptable. He is entitled to the basic pay of Rs. 1,600 per month with all other dues. Although I find that the termination of service of the second party was illegal and he is liable to be reinstated, I feel he is not entitled to back wages as he did not serve the management for a long period may be due to his illness and illness of his mother. He was not paid monthly salary but he was paid his dues as per the days of work and therefore he cannot be said to be entitled to back wages for any period.

In view of the discussions made above, the following Award is passed :

AWARD

The reference is answered in favour of the second party workman *ex parte* without cost. The termination of employment of Shri Malaya Kumar Giri with effect from the 6th August 2010 by way of refusal of employment by the management of M/s Jain Steel & Power Ltd., At./P.O. Durlaga , Dist. Jharsuguda is held to be illegal and unjustified. The management is directed to reinstate the second party in service within a period of one month of publication of Award in official gazette.

Dictated and corrected by me.

SRIKANTA MISHRA

14-3-2013

Presiding Officer
Labour Court
Sambalpur

SRIKANTA MISHRA

14-3-2013

Presiding Officer
Labour Court
Sambalpur

By order of the Governor

J. DALANAYAK

Under-Secretary to Government